



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 6th day of August, 2018

**ALAMOSA, COLORADO
ALTOONA, PENNSYLVANIA
BRADFORD, PENNSYLVANIA
DUBOIS, PENNSYLVANIA
FORT DODGE, IOWA
FRANKLIN/OIL CITY, PENNSYLVANIA
HAGERSTOWN, MARYLAND
JACKSON, TENNESSEE
JOHNSTOWN, PENNSYLVANIA
KIRKSVILLE, MISSOURI
LANCASTER, PENNSYLVANIA
MASON CITY, IOWA
MORGANTOWN, WEST VIRGINIA
MUSCLE SHOALS, ALABAMA
OWENSBORO, KENTUCKY
PRESCOTT, ARIZONA
PUEBLO, COLORADO
STAUNTON, VIRGINIA
TUPELO, MISSISSIPPI
VERNAL, UTAH
VICTORIA, TEXAS**

**KEARNEY, NEBRASKA
MACON, GEORGIA
PENDLETON, OREGON
SCOTTSBLUFF, NEBRASKA**

**DOT-OST-1997-2960
DOT-OST-2002-11446
DOT-OST-2003-14528
DOT-OST-2004-17617
DOT-OST-2001-10682
DOT-OST-1997-2523
DOT-OST-2006-25228
DOT-OST-2000-7857
DOT-OST-2002-11451
DOT-OST-1997-2515
DOT-OST-2002-11450
DOT-OST-2001-10684
DOT-OST-2005-20735
DOT-OST-2000-7856
DOT-OST-2000-7855
DOT-OST-1996-1899
DOT-OST-1999-6589
DOT-OST-2002-11378
DOT-OST-2009-0305
DOT-OST-1997-2706
DOT-OST-2005-20454**

**DOT-OST-1996-1715
DOT-OST-2007-28761
DOT-OST-2004-19934
DOT-OST-2003-14535**

FINAL ORDER GRANTING ESSENTIAL AIR SERVICE WAIVERS

Summary

By this Order, the United States Department of Transportation (the Department) makes final its tentative determinations in Order 2018-5-14, that all 25 communities listed in the caption of this Order did not meet one or two statutory eligibility criteria required to remain in the Essential Air Service (EAS) program. This Order also grants the petitions for waivers for 21 communities listed in the first group in the caption of this Order, and finalizes the tentative grant of waivers for the four communities in the second group because each one experienced a service hiatus during Fiscal Year 2017, as discussed further below.

Background

The FAA Modernization and Reform Act of 2012 (“FAA 2012”), Pub. L. 112-95, amended 49 U.S.C. § 41731(a)(1)(B) to change the definition of “eligible place” for the purpose of receiving EAS. The amended statute now states that to be an eligible place, a community must maintain an average of 10 enplanements or more per service day, as determined by the Secretary, during the most recent fiscal year beginning after September 30, 2012. The legislation exempts locations in Alaska and Hawaii and communities that are more than 175 driving miles from the nearest large- or medium-hub airport.¹ The Secretary also has the authority to waive the 10-enplanement standard, on an annual basis, if the community can demonstrate that the reason the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements.²

The Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. 106-69, prohibits the Department from subsidizing EAS for communities located within the 48 contiguous States when per passenger subsidy amounts exceed \$200, unless the communities are located more than 210 miles from the nearest large- or medium-hub airport (the “Subsidy Cap”). FAA 2012 authorized the Secretary of Transportation to waive the Subsidy Cap, subject to the availability of funds, on a case-by-case basis, for a limited period of time.

By Order 2018-5-14, May 11, 2018, the Department tentatively determined that the 25 communities listed in the caption failed to meet either or both statutory eligibility standards discussed above, but gave communities until May 31, 2018, to either challenge the data that the Department used in making tentative decisions and/or file a petition for waiver(s). Specifically, all 25 communities exceeded the Subsidy Cap. Four communities³ that are subject to the 10-enplanement requirement averaged fewer than the required 10 enplanements per day. Additionally, by Order 2018-5-14, the Department tentatively granted a waiver to four communities⁴ that experienced an extended service hiatus during Fiscal Year 2017 (or FY 2017) and directed all interested persons to show cause why the Department should not make final the tentative waivers.

¹ 49 U.S.C. § 41731(c) & (d).

² 49 U.S.C. § 41731(e).

³ Franklin/Oil City, PA, Hagerstown, MD, Pueblo, CO, and Victoria, TX.

⁴ Kearney, NE, Macon, GA, Pendleton, OR, and Scottsbluff, NE.

In response to Order 2018-5-14, the Department did not receive any objections regarding the data provided.⁵ The Department received waiver petitions from 21 communities, as discussed below.⁶ (See Appendix A.)

Proposals for Service that Comply with Subsidy Cap

49 U.S.C. § 41733(f)(2) states that the Secretary must establish procedures to permit a community to work directly with an air carrier to submit a proposal that would not exceed the Subsidy Cap prior to termination of eligibility for non-compliance with the Subsidy Cap. In Order 2018-5-14, the Department encouraged communities to work with the air carrier providing subsidized EAS to submit a proposal that complies with the minimum service requirements at 49 U.S.C. § 41732(b) for a subsidy below the Subsidy Cap. If a proposal to comply with the Subsidy Cap was contemplated, carriers were advised to express a willingness to amend their current Order for EAS service to reduce the subsidy, consistent with the submitted proposal. Communities that wished to submit a proposal in accordance with 49 U.S.C. § 41733(f)(2) had 20 days following the service date of that Order.

In the Order, the Department informed communities of the maximum total subsidy level for each of the 21 communities that had continuous service during FY 2017, to be in compliance with the Subsidy Cap, assuming that enplanements remained constant at FY 2017 levels. Further, the Department stated that if it determines that a proposal submitted was reasonable, the Department would amend the community's current Order for its subsidized EAS to align with that proposal, and take no further action based on the community's FY 2017 non-compliance with the Subsidy Cap.

No community or air carrier submitted a proposal to comply with the Subsidy Cap.

Decision

As outlined in Order 2018-5-14, the Department recognized that four of the 25 communities at issue experienced an extended service hiatus in FY 2017 during which time there was no scheduled EAS at the community. Because of the service hiatus, these communities endured a particular hardship during FY 2017 that materially and substantially impaired their ability to comply with the 10-enplanement and Subsidy Cap requirements, and the Department proposed a tentative waiver from the requirements for FY 2017.

The Department directed all interested persons to show cause why it should not make final the tentative findings regarding the four communities. The Department received no objections to the tentative grant of a waiver to the four communities. Thus, the Department will finalize the granting of waivers from their applicable eligibility requirements for Kearney, NE, Macon, GA, Pendleton, OR, and Scottsbluff, NE.

⁵ Although no community objected to the Department's calculations, Prescott objected to the validity of the subsidy payments to its EAS carrier, alleging that its carrier was only entitled to 50 percent of the payments it actually received because it did not use the aircraft type specified in DOT Order 2017-7-12 for the majority of the flights operated in FY 2017. The Department takes these allegations seriously and will evaluate them.

⁶ All communities in Appendix A that did not experience a service hiatus in FY 2017 filed petitions for waivers.

The Order also directed all interested persons to show cause as to why the Department should not make final the tentative findings and conclusions set forth above and/or file a petition for a waiver from the 10-enplanement/Subsidy Cap requirements. The remaining 21 communities submitted petitions for waivers from one or both of the requirements.

After careful consideration of this matter, the Department has decided to grant the waiver petitions of all 21 communities that petitioned the Department for a waiver from one or both eligibility requirements. The Department acknowledges that there were challenges arising from the air service provided at these communities, including a nationwide commercial pilot shortage, that caused reliability issues and resulted in increases in the per passenger subsidy. As noted in the waiver petitions, many communities currently have a new air carrier and passenger levels are increasing. All 21 communities, both those that have and have not experienced a carrier change, have indicated that they are working with their carrier to improve service and attract passengers, and expect their subsidy per passenger to decline. For these reasons, the Department has decided to grant these 21 communities a waiver from the Subsidy Cap.

In addition, four of the communities that had service during the entire fiscal year also sought a waiver from the 10-enplanement requirement (Franklin/Oil City, PA, Hagerstown, MD, Pueblo, CO, and Victoria, TX). The reasons identified above for the Department's decision to grant these communities' waivers from the Subsidy Cap requirement, a review of those communities' past enplanement data, and the arguments put forth in their waiver petitions, demonstrates to the Department's satisfaction that the decline in enplanements at these four communities is temporary.

The waivers granted by this Order apply to Fiscal Year 2017. All communities are expected to be compliant for Fiscal Year 2018, which ends September 30, 2018.

ACCORDINGLY,

1. The Department finalizes its tentative decision in Order 2018-5-14 and grants waivers from the Subsidy Cap requirement to the four communities for Fiscal Year 2017 that experienced a service hiatus in Fiscal Year 2017: Kearney, NE, Macon, GA, and Pendleton, OR, and Scottsbluff, NE;
2. The Department makes final its tentative findings that Alamosa, CO, Altoona, PA, Bradford, PA, DuBois, PA, Fort Dodge, IA, Franklin/Oil City, PA, Hagerstown, MD, Jackson, TN, Johnstown, PA, Kirksville, MO, Lancaster, PA, Mason City, IA, Morgantown, WV, Muscle Shoals AL, Owensboro, KY, Prescott, AZ, Pueblo, CO, Staunton, VA, Tupelo MS, Vernal UT, and Victoria, TX, are not compliant with the Subsidy Cap, and grants a waiver from the Subsidy Cap requirement for these communities;
3. The Department makes final its tentative determination that Franklin/Oil City, PA, Hagerstown, MD, Pueblo, CO, and Victoria, TX, are also not compliant with the 10-enplanement requirement, and grants a waiver from the ten-enplanement requirement for these communities;

4. These dockets will remain open until further Order of the Department; and
5. The Department will serve copies of this Order on the civic officials of all communities listed in the caption of this Order, Boutique Air, Inc., Hyannis Air Service, Inc. d/b/a Cape Air, Multi-Aero, Inc. d/b/a Air Choice One, SkyWest Airlines, Inc., and Southern Airways Express, LLC.

By:

Joel Szabat
Deputy Assistant Secretary
for Aviation and International Affairs

(SEAL)

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EAS Communities determined to have fewer than 10 enplanements per service day and/or exceeded the \$200 subsidy cap during Fiscal Year 2017

A	B	C	D	E	F	G	H	I	J
Count	State	EAS Community	Miles to nearest L/M HUB	Nearest L/M hub	Total enplanements and deplanements	Service days*	Enplanements per day (column F divided by G)	Actual Subsidy Paid	Subsidy per passenger (I divided by F)

Communities that experienced a service hiatus and are tentatively non-compliant with the Subsidy Cap

1	GA	Macon	82	ATL	2,027	38	26.7	\$965,916	\$477
1	NE	Kearney	181	OMA	12,094	296	20.4	\$3,023,013	\$250
1	NE	Scottsbluff	192	DEN	7,920	296	13.4	\$2,006,141	\$253
1	OR	Pendleton	205	PDX	8,380	245	17.1	\$1,770,958	\$211

Communities that are subject to both the 10-enplanement requirement and the \$200 subsidy cap and are tentatively non-compliant with both

1	CO	Pueblo	121	DEN	4,979	313	8.0	\$1,405,220	\$282
1	MD	Hagerstown	78	IAD	4,214	313	6.7	\$1,449,051	\$344
1	PA	Franklin/Oil City	85	PIT	2,725	313	4.4	\$1,123,660	\$412
1	TX	Victoria	119	AUS	6,236	313	9.9	\$2,371,698	\$380

Communities that are subject to both the 10-enplanement requirement and the \$200 subsidy cap, but are tentatively non-compliant with the Subsidy Cap

1	AL	Muscle Shoals	122	BNA	12,483	313	19.9	\$2,765,024	\$222
1	AZ	Prescott	102	PHX	11,534	313	18.4	\$2,705,530	\$235
1	IA	Fort Dodge	156	OMA	13,715	313	21.9	\$3,337,776	\$243
1	IA	Mason City	133	MSP	15,269	313	24.4	\$3,325,536	\$218
1	KY	Owensboro	138	BNA	9,204	313	14.7	\$2,006,487	\$218
1	MO	Kirksville	154	MCI	9,534	313	15.2	\$1,938,000	\$203
1	PA	Johnstown	84	PIT	6,741	313	10.8	\$2,345,642	\$348
1	PA	DuBois	112	PIT	6,877	313	11.0	\$2,273,942	\$331
1	PA	Altoona	112	IAD	7,236	313	11.6	\$2,197,800	\$304
1	PA	Bradford	77	BUF	7,336	313	11.7	\$1,943,304	\$265
1	PA	Lancaster	86	PHL	8,160	313	13.0	\$2,183,861	\$268
1	TN	Jackson	137	BNA	7,565	313	12.1	\$2,035,012	\$269
1	UT	Vernal	150	SLC	12,590	313	20.1	\$3,336,345	\$265
1	VA	Staunton	134	IAD	12,013	313	19.2	\$3,155,685	\$263
1	WV	Morgantown	75	PIT	12,241	313	19.6	\$2,567,505	\$210

Communities that are subject to the \$200 subsidy cap but not 10-enplanement requirement, and are tentatively non-compliant with the Subsidy Cap

1	CO	Alamosa	205	ABQ	12,330	313	19.7	\$2,605,572	\$211
1	MS	Tupelo	204	BNA	18,626	313	29.8	\$4,315,896	\$232